STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 20, 2006
v	No. 259826 Wayne Circuit Court
JOSHUA JONES, Defendant-Appellant.	LC No. 04-009115-01

Before: Cooper, P.J., and Neff and Borrello, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carjacking, MCL 750.529a, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to 9 to 15 years' imprisonment for the carjacking conviction and to two years' imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

The relevant events began when Keisha Harris stopped at a gas station late one night to buy aspirin. While she was standing outside of her car, defendant approached her, pointed a gun at her head, demanded possession of her car, and then stole the car. Harris was the only person to directly witness these events. Harris later identified defendant at a photographic lineup, at the preliminary examination, and at trial. The only evidence against defendant was the identification testimony by Harris and the fact that defendant was picked up in the vicinity of the gas station nine days after the carjacking occurred. Defendant exercised his right not to testify and defense counsel did not present any witnesses or physical evidence at trial that contradicted Harris's testimony. Defendant argues that the verdicts were against the great weight of the evidence. We disagree.

When reviewing a claim that the verdict is against the great weight of the evidence, this Court reviews the record to see "whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003).

Carjacking, which is a felony, occurs when the threat of force or violence is used to steal a car. Felony-firearm occurs when a person possesses a firearm while committing or attempting to commit a felony. MCL 750.227b. Here, Harris's testimony established each of the elements of the crimes for which defendant was charged.

Nonetheless, defendant argues that the verdicts are against the great weight of the evidence because the prosecution failed to present supporting evidence of his guilt. For instance, the police never found the gun and the prosecution never presented any physical evidence that linked defendant to the stolen vehicle. In addition, defendant states that the prosecution failed to present key witnesses, such as the gas station attendant who was on duty the night of the incident and the gas station owner. According to defendant, these witnesses could have told the court that defendant had previously worked for the gas station owner and that defendant lived in the same area as the gas station, thereby explaining why the police picked him up in the vicinity of the gas station.

The prosecution has a duty to disclose exculpatory witnesses, if they are known. *People v Burwick*, 450 Mich 281, 287, 290 n 12; 537 NW2d 813 (1995). The prosecution also must list all known witnesses that might be called at trial. *Id*. at 287; MCL 767.40a(1). However, the prosecution does not have a duty to "search for evidence to aid the other's case." *Id*. at 289 n 10. Here, the prosecution included the gas station owner and attendant on its witness list as required. Therefore, the prosecution fulfilled its obligations. In addition, defense counsel waived all remaining witnesses at trial.

Moreover, "[t]he people are not required to offer evidence corroborating a witness's testimony when she testifies from her own personal knowledge . . . ." *People v Alexander*, 142 Mich App 231, 234; 370 NW2d 8 (1985). In addition, "[t]he credibility of the identification testimony is a question for the trier of fact that we do not resolve anew" on appeal. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). There are "very narrow" exceptions to this general rule such as where the testimony: (1) "'contradicts indisputable physical facts or laws,'" (2) "'defies physical realities,'" (3) is "'material and is so inherently implausible that it could not be believed by a reasonable juror,'" or (4) has been "seriously 'impeached' and the case marked by 'uncertainties and discrepancies.'" *People v Lemmon*, 456 Mich 625, 643-644, 647; 576 NW2d 129 (1998) (citations to internal quotations omitted).

Defendant has not shown that any exception has been met in this case. Rather, he points to issues of credibility such as Harris's fatigue and anxiety, the brief period during which she observed the perpetrator, and the fact that the perpetrator was wearing a hood. These issues do not render Harris's testimony inherently implausible. Her testimony does not defy physical realities nor was it seriously impeached or marked by uncertainty. Therefore, because the court found Harris's testimony credible, the court appropriately based its decision to convict defendant on Harris's testimony.

The lower court explained that although Harris's testimony was the only evidence against defendant, Harris's testimony was supported in part by the fact that defendant was taken into custody near the scene of the crime. Moreover, the court explained that "[t]here was nothing about her testimony that would give [it] any pause at all not to place full reliability in her testimony on the identification issue."

Defendant has not pointed to any evidence in the record that contradicts the verdict. When the verdict is based on credible eyewitness testimony that establishes the elements of the crimes charged beyond a reasonable doubt, no corroborating evidence is necessary. Finally, there is no reason to overturn the lower court's credibility determination. Therefore, defendant

has failed to show that the evidence "preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Musser*, *supra* at 218-219.

In his brief on appeal, defense counsel also claims that defendant was denied the effective assistance of counsel, both at trial and at the *Wade*[1] hearing, and that Harris's identification of defendant was tainted by an unduly suggestive photographic lineup. These issues are not included in the statement of questions presented section of his brief on appeal and, therefore, have not been properly presented for review. MCR 7.212(C)(5); *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999). Therefore, we decline to review them.[2]

Affirmed.

/s/ Jessica R. Cooper
/s/ Janet T. Neff
/s/ Stephen L. Borrello

[1] *United States v Wade*, 388 US 218, 235; 87 S Ct 1926; 18 L Ed 2d 1149 (1967).

[2] Regardless, they are without merit.